

U S WEST, Inc.
1801 California Street, Suite 4730
Denver, Colorado 80202
303-672-2661

Facsimile 303-295-7060

Robert B. McKenna
Corporate Counsel

July 17, 1996

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USWEST

JUL 17 1996

EX PARTE PRESENTATION

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Implementation of the Local Competition Provisions
in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Mr. Caton:

On July 16, 1996, U S WEST, Inc. ("U S WEST") held a meeting at the Federal Communications Commission concerning the above-referenced proceeding. The meeting was with James Casserly, Senior Legal Advisor to Commissioner Ness. In attendance at the meeting on behalf of U S WEST were Robert McKenna, Corporate Counsel - U S WEST; Lawrence E. Sarjeant, Vice President - Federal Regulatory and Cyndie Eby, Executive Director - Federal Regulatory. U S expressed the following points:

- The Telecommunications Act targets specific businesses (i.e. incumbent LECs) to support legitimate public policy objectives, instead of applying these burdens across the entire industry. This targeted allocation of public burdens triggers critical Fifth Amendment taking and Equal Protection Constitutional protections.
- Interconnection prices must be set at a level consistent with the overall profitability of the incumbent LEC. Thus interconnection prices cannot be set in a vacuum, and must reflect the inevitable and close relationship between interconnection and all other forms of access, federal and state in this regard.

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- Interconnection prices cannot be set on the assumption that business and operational costs and investments which are part of providing interconnection can be recovered elsewhere (via other services or in other jurisdictions).
- Interconnection prices (including prices of network elements and wholesale prices for resale) cannot be set so as to create a significant differential between wholesale and retail prices. If the price for network elements is set so low that U S WEST cannot sell its retail service (because competing retailers can rely on unpriced network elements to compete with U S WEST's service), U S WEST would be deprived of its ability to sell at retail, which would constitute a taking of U S WEST property.
- Network element prices must reflect the cost of unbundling.
- U S WEST retail service prices, compared to network element prices, must be permitted to recognize efficiencies gained through unbundled operations.
- Subsidies (e.g. residential rate subsidies) must be eliminated.
- Proper depreciation rates for investment are critical.
- Any statutory or regulatory subsidy of individual competitors by incumbent LECs has Constitutional implications:
 - Requiring U S WEST to sell facilities or services to AT&T (for example) below AT&T's own cost of construction or operation would constitute a subsidy from U S WEST to AT&T.
 - Such below-value dedication of facilities or services to AT&T by U S WEST pursuant to government mandate traditionally requires compensation to U S WEST for the value of the facility.
 - U S WEST's Constitutional rights are clearer when the service or facility is not economically "essential" to AT&T. That is, AT&T can economically construct the facility itself but prefers not to.
 - These constitutional rights are clearer still when U S WEST must engage in new construction to meet AT&T's demands.

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- In all events, U S WEST's recovery rights to full investment for facilities sold to or constructed for AT&T or other interconnectors are protected by the Constitution.
- U S WEST cannot be required to construct facilities for anyone without a guaranty of recovery of full investment.
 - Regulatory construction orders and rules which do not include such recovery are invalid.
 - Carrier-of-last-resort rules are invalid outside the context of the Universal Service docket.
- FCC rules which would operate to preclude U S WEST from recovering investment put in under the pre-1996 regulatory regime would also create liability on the part of the United States for breach of the implied regulatory contract which ensured that U S WEST would have the reasonable opportunity to recover such investment (e.g. Winstarr).

In accordance with Commission Rule 1.1206(a)(1), two copies of this summary of presentation are being filed with you for inclusion in the public record. Due to word processing problems, this summary of presentation is being filed the day after the presentation. Acknowledgment and date of receipt of this letter are requested. A copy of this transmittal letter is provided for this purpose.

Sincerely,

Robert B. McKenna / RBA

cc: Mr. James Casserly